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No. 93-350

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ALLSTATE LIFE INSURANCE CO.,
An Illinois Corporation, et al.,

Petitioners,

vs.

LINTER GROUP LIMITED, A Limited Company Incorporated Under The Laws Of The State Of New South Wales In The Commonwealth of Australia, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT BANKS' BRIEF IN OPPOSITION

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September 29, 1993

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QUESTION RESTATED

Whether the United States Court of Appeals for the Second Circuit erred in affirming, on an abuse of discretion standard, the District Court's dismissal of plaintiffs' claims against foreign defendants on the ground of *forum non conveniens* where the District Court carefully considered and balanced all of the private and public interest factors set forth in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), and expressly accorded great, but not absolute, deference to the plaintiffs' choice of a United States forum.

STATEMENT REQUIRED BY RULE 29.1

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

Respondent Australia and New Zealand Banking Group Limited has the following corporate parents, subsidiaries or affiliates that have issued shares to the public: Australian Futures Fund Limited, Global Markets Fund Limited, Australia and New Zealand Banking Group (PNG) Limited, Grindlays Bahrain Bank BSC, First Grindlays Moderaba, ANZ Eurofinance BV, Grindlays Eurofinance BV, Nepal Grindlays Bank Limited, and Esanda Finanz & Leasing Ltd.

BANK OF NEW ZEALAND

Respondent Bank of New Zealand has two parents, subsidiaries or affiliates whose shares have been issued to the public, National Australia Bank Limited and BNZ Finance Limited.

BARCLAYS BANK AUSTRALIA LIMITED

Respondent Barclays Bank Australia Limited's parent Barclays Bank Plc has issued shares to the public.

CHASE AMP BANK LIMITED

At the time of commencement of the action below, respondent Chase AMP Bank Limited ("CABL") was jointly owned by The Australian Mutual Provident Society ("AMP"), an Australian mutual society, and Chase Manhattan Holdings (Australia) Limited ("Chase Holdings"), a Delaware corporation. Although mutually owned by its policy holders, AMP is not publicly listed. Chase Holdings is not publicly held but is wholly owned ultimately by The Chase Manhattan Corporation, a publicly-held Delaware corporation. CABL's successor, The Chase Manhattan Bank Australia Limited,

is also wholly owned by The Chase Manhattan Corporation. Neither CABL nor its successor has any other parent company, subsidiary, or affiliate that is publicly held.

COMMONWEALTH BANK OF AUSTRALIA

Respondent Commonwealth Bank of Australia has no parent, subsidiary, or affiliate that is publicly held.

SECURITY PACIFIC AUSTRALIA LIMITED

Respondent Security Pacific Australia Limited is, for the purpose of this action, affiliated with BankAmerica Corporation, which has issued shares to the public.

STATE BANK OF SOUTH AUSTRALIA

Respondent State Bank of South Australia has no parent, subsidiary, or affiliate that is publicly held.

SUMITOMO INTERNATIONAL FINANCE AUSTRALIA LIMITED

Respondent Sumitomo International Finance Australia Limited is a wholly-owned subsidiary of the Sumitomo Bank Limited, which has issued shares to the public.

WESTPAC BANKING CORPORATION

Respondent Westpac Banking Corporation has no parent, subsidiary, or affiliate that is publicly held.

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RESPONDENT BANKS' BRIEF IN OPPOSITION

Respondents Australia and New Zealand Banking Group Limited, Bank of New Zealand, Barclays Bank Australia Limited, Chase AMP Bank Limited, Commonwealth Bank of Australia, Security Pacific Australia Limited, State Bank of South Australia, Sumitomo International Finance Australia Limited, and Westpac Banking Corporation (collectively, the "Banks"), respectfully pray that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit be denied.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit, dated June 2, 1993, is reported as *Allstate Life Insurance Co. v. Linter Group Limited*, 994 F.2d 996 (2d Cir. 1993). A copy of the opinion below is annexed to the Petition for Writ of Certiorari ("Pet.") at A1-A14.[1]

JURISDICTION

Petitioners have invoked, but fail to establish, the jurisdiction of this Court under 28 U.S.C. § 1254(1).

Petitioners alleged subject matter jurisdiction in the District Court as to their claim against the Banks under Section 27 of the Securities Exchange Act of 1934 (the "1934 Act"). Contrary to petitioners' assertions, the complaint did not allege diversity of citizenship between the parties under 28 U.S.C. § 1332(a)(3). *See* Pet. at 2.

STATEMENT OF THE CASE

Nature of the Case

This petition for certiorari arises out of two actions commenced in the United States District Court for the Southern District of New York, *Allstate Life Insurance Co. v. Linter Group Ltd.*, 91 Civ. 1655 (RPP) (*"Linter I"*), and *Allstate Life Insurance Co. v. Linter Group Ltd.*, 91 Civ. 2873 (RPP) (*"Linter II"*). The Banks were sued only in *Linter II*.

Petitioners, who are large institutional investors, purchased high-yield subordinated debentures originally issued by Linter Textiles Corporation Limited ("LTCL"), an Australian corporation,

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1. All record citations (*e.g.*, A2) refer to the appendix to the petition.

in October 1988. A large number of those purchases were made at highly-discounted prices after these actions had been commenced and long after LTCL and its affiliates entered insolvency proceedings in Australia.

Petitioners' claim in *Linter II* against Linter Group Limited ("Linter"), also an Australian corporation, and LTCL, its wholly-owned Australian subsidiary (collectively, the "Linter Defendants"), is based on alleged omissions in the LTCL prospectus offering the debentures for sale.[2] A5. Petitioners' single claim against the Banks in *Linter II* is that the Banks aided and abetted these alleged omissions. *Id.* Each of the Banks filed an answer denying the material allegations in the complaint and asserted a cross-claim against the Linter Defendants for contribution. *Id.* Although the Banks dispute most of petitioners' "Statement of Facts," the majority of those facts are not material to the Court's consideration of the petition and thus, are not addressed herein.

Course of Proceedings

In April 1991, one month after commencing *Linter I*, the petitioners commenced *Linter II*.[3] *Id.* In July 1991, the Banks jointly moved to dismiss the action on the ground that New York

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2. Respondent Linter Defendants are filing a separate brief in opposition to the petition.

3. In addition to their two actions in New York, the petitioners are pursuing the same and other claims in three judicial proceedings in Australia. Contrary to the picture of the Australian proceedings proffered by petitioners, petitioners have been very active in the Australian proceedings, and the courts there have repeatedly rejected petitioners' assertions that the District Court in New York is better suited to hear the petitioners' claim. A4, A124.

was an inconvenient forum and that petitioners' claim should be litigated in Australia. *Id.* Four of the Banks also moved individually to dismiss for lack of personal jurisdiction. A30-A31.

In its first opinion in *Linter II*, dated January 9, 1992, the District Court denied the Banks' motion to dismiss on the ground of *forum non conveniens*, although it acknowledged that Australia provides an adequate alternative forum and is more convenient, and that it would cost less to litigate the claim in Australia. A17, A65. The District Court recognized that "evidence of unusually extreme circumstances" and "material injustice" are required before a United States citizen is denied access to United States courts and acknowledged the "strong presumption in favor of a plaintiff's choice of forum." A57-A58. The court also denied the four banks' motions to dismiss for lack of personal jurisdiction. A32-A52. Thereafter, the Banks filed their answers and cross-claims against the Linter Defendants. A5.

By opinion dated June 1, 1992, the District Court dismissed the complaint in *Linter I* on the ground of comity in deference to insolvency proceedings in Australia involving the Linter Defendants. A67-A109. Based on that decision, the Linter Defendants moved to dismiss *Linter II* on the ground of comity. A5. At the same time, the Banks again jointly moved to dismiss the claim against them on the ground of *forum non conveniens*, contending, among other things, that litigating *Linter II* in New York would substantially prejudice them and the fact-finding process. A5. The Banks argued that the District Court's dismissal of the Linter Defendants, recent developments in three related actions involving petitioners in Australia, and other findings of the District Court in its earlier decision in *Linter II*, warranted dismissal.

By opinion dated December 21, 1992, the District Court granted the Linter Defendants' motion to dismiss them from *Linter II*. A114, A125-A128. In the same opinion, the District Court granted the Banks' motion to dismiss, not only because of the dismissal of the Linter Defendants, but also because of events subsequent to its earlier *Linter II* decision which, as the court articulated, rendered New York an inconvenient forum under the test set forth by this Court in *Gulf Oil Corp. v. Gilbert* ("*Gilbert*"), 330 U.S. 501 (1947). *See* A141 ("[s]ubsequent developments have since rendered Australia the only continent on which all claims arising out of the purchase of the LTCL debentures may be litigated"). The District Court again noted the "high hurdle" to be cleared before United States citizens may be denied access to the United States courts, but held that the Banks' hurdle was not "insurmountable," as "United States citizens do not have an absolute right to sue in American courts." A131. Judgment in *Linter II* was entered on December 31, 1992. Petitioners appealed from the judgments entered in *Linter I* and *Linter II*, arguing that the District Court abused its discretion in dismissing both actions.

By decision dated June 2, 1993, the United States Court of Appeals for the Second Circuit affirmed the District Court's judgments in *Linter I* and *Linter II* in all respects. Observing that there is a "strong presumption in favor of a plaintiff's choice of forum," the Second Circuit stated that "the Supreme Court has recognized that dismissal nevertheless may be appropriate where certain private and public interest factors point towards trial in an alternative forum." A11 (citing *Gilbert*, 330 U.S. at 508-09; *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981)). The Second Circuit also observed that it could reverse the District Court's dismissal of the Banks only where "there has been a clear abuse of discretion" and that such abuse exists "only where a court fails to

'carefully consider [] the *Gilbert* factors.'" A12 (quoting *Borden, Inc. v. Meiji Milk Prods. Co.*, 919 F.2d 822, 828 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 2259 (1991)).

The Second Circuit concluded that the District Court correctly required the Banks to clear a "high hurdle" and that the District Court carefully considered and properly weighed the *Gilbert* factors, including: any judgment against the Banks would have to be enforced in Australia (or New Zealand); most of the relevant documents are located in Australia; most material witnesses (including former officers, directors and employees of Linter) are in Australia and would have been unavailable to testify at trial in the United States; the cost of bringing witnesses to the United States for trial would have been great; the cost of litigating *Linter I* and *Linter II* in different continents would have been unnecessary; the Banks would have been unfairly deprived of their right to bring cross-claims against the Linter Defendants in the United States; and Australia has a very strong local interest in trying this case. A12-A14.

REASONS FOR DENYING THE WRIT

Petitioners ask this Court to grant certiorari to review a circuit court decision that upheld—on an abuse of discretion standard—a district court's careful balancing of more than a dozen private and public interest factors set forth in this Court's long-established test for dismissal of a claim on the ground of *forum non conveniens*. The balancing of each factor required a fact-intensive inquiry and received extensive treatment in briefs and oral argument to the Southern District of New York (twice) and the Court of Appeals for the Second Circuit. Both district court opinions carefully weighed dozens of pages of facts, argument and affidavits. Both opinions accorded substantial deference to petitioners' choice of a United States forum. The Second Circuit thoroughly reviewed the District Court's reweighing of the extensive record relevant to the balancing test, and the District Court's application of the *Gilbert* standards, paying specific attention to the deference owed to the petitioners' choice of a United States forum.

Petitioners have not and cannot demonstrate the existence of a substantial federal question or circuit conflict warranting certiorari. This Court has regularly declined to exercise its jurisdiction for the purpose of questioning a lower court's evaluation or balancing of the factors necessary to justify the dismissal of a claim on the ground of *forum non conveniens*, showing a reluctance to micromanage the federal courts' application of the clear rules set forth in its *forum non conveniens* precedent. Petitioners' disagreement with the exercise of the District Court's discretion, as well as with the Second Circuit's review of that exercise of discretion, does not meet the requirements embodied in Rule 10 of this Court's rules, and is not appropriate for review by this Court.

I

THERE IS NO SUBSTANTIAL FEDERAL QUESTION WARRANTING ISSUANCE OF A WRIT OF CERTIORARI

The test governing *forum non conveniens* analysis was promulgated in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), and confirmed in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). In *Gilbert*, this Court held that when the forum in which an action is pending is sufficiently inconvenient, the trial court may resist jurisdiction and dismiss the action to a more convenient alternative forum. *Gilbert*, 330 U.S. at 507-08. The "ultimate inquiry" is the determination of "where trial will best serve the convenience of the parties and the ends of justice." *Koster v. Lumbermens Mut. Casualty Co.*, 330 U.S. 518, 527 (1947). The Court in *Gilbert* listed certain "private interest" and "public interest" factors for a district court to consider in its evaluation of whether dismissal is warranted based on the inconvenience of the forum. *Gilbert*, 330 U.S. at 508-09. The Second Circuit's decisions—including the decision below (A11-A12)—have repeatedly acknowledged that *Gilbert* is unquestionably the governing authority on *forum non conveniens*. *See, e.g., Borden, Inc. v. Meiji Milk Prods. Co.*, 919 F.2d 822, 827 (2d Cir. 1990) (quoting *Alcoa Steamship Co. v. M/V Nordic Regent*, 654 F.2d 147, 150 (2d Cir.) (*en banc*), *cert. denied*, 449 U.S. 890 (1980)), *cert. denied*, 111 S. Ct. 2259 (1991).

It is also well-settled that "[t]he doctrine [of *forum non conveniens*] leaves much to the discretion of the [trial] court." *Gilbert*, 330 U.S. at 508; *see also Piper*, 454 U.S. at 257 ("[t]he *forum non conveniens* determination is committed to the sound discretion of the trial court."). As this Court stated in *Piper*, a district court decision on *forum non conveniens* "may be reversed

only when there has been a clear abuse of discretion; where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves *substantial deference*." 454 U.S. at 257 (emphasis added). This Court has emphasized that the circuit court's role on appeal is not to "substitute[] its own judgment for that of the District Court" (*id.*), and has specifically refused to "lay down a rigid rule to govern discretion," emphasizing that "[e]ach case turns on its facts."[4] *Id.* at 249, 257 (citing *Williams v. Green Bay & Western Railroad Co.*, 326 U.S. 549, 557 (1946)).

Petitioners do not dispute that the District Court thoroughly considered *all* of the *Gilbert* factors. A52-A66; A128-A142 (citing its first decision, A52). After carefully applying those factors to the facts before it, the Court determined that Australia—where three related cases already are pending—is the superior forum for the petitioners' claim. Petitioners argue that this Court should nevertheless grant a writ of *certiorari* to "establish a uniform standard with respect to *what* deference should be accorded a United States plaintiff's choice of forum." Pet. at 34 (emphasis added). This Court's prior decisions, however, have already firmly established that great, but not dispositive, deference should be accorded to a plaintiff's choice of forum. Moreover, contrary to petitioners' contention, the District Court accorded substantial deference to petitioners' choice of forum. A57-A58, A65, A130-31. In both of its decisions, the District Court expressly acknowledged that petitioners' choice of forum should not be disturbed unless

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4. *See* Henry J. Friendly, *Indiscretion About Discretion*, 31 Emory L.J. 747, 751 (1982) (as currently formulated, the standard of review articulated in *Piper Aircraft* requires "almost complete obeisance to the district court['s]" balancing of the *Gilbert* factors).

material injustice would otherwise result, citing this as a "high hurdle" for the Banks to clear in order to obtain dismissal. A58; A130 (citing *Leasco Data Processing Equip. Corp. v. Maxwell*, 468 F.2d 1326, 1344 (2d Cir. 1972)). Far from demonstrating a clear abuse of discretion, the District Court's decisions reflect a deliberate and cautious exercise of its discretion to dismiss an action in favor of a foreign forum. The Second Circuit correctly agreed.[5] A12.

In essence, petitioners contend that a United States plaintiff's[6] choice of forum is dispositive absent a showing that the forum is vexatious and oppressive, and thus is entitled to a degree of deference beyond that required under *Gilbert*. In *Piper*, this Court resolved that very issue:

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5. Petitioners' characterization of the analysis in these three opinions as "lip service" (Pet. at 36) and their assertion that the Second Circuit refused "even to acknowledge, let alone give any weight to petitioners' choice of forum" (Pet. at 45) are flatly contradicted by the record. *See* A11, A57 (Second Circuit and District Court recognizing "strong presumption in favor of a plaintiff's choice of forum") (citing *Piper*); A12, A130-A131 (Second Circuit discussing District Court's acknowledgement of "'high hurdle' that the Banks had to clear to obtain dismissal on the ground of forum non conveniens"); A57 (District Court discussing need for "greater deference when the plaintiff has chosen its home forum") (citing *Koster*); A65 (District Court noting Banks' "substantial burden").

6. Petitioners describe themselves as "institutional investors who maintain their principal place of business in the United States." Pet. at 13. By their own admission, however, Plaintiffs Ariel Fund Ltd. and Carmel Fund Ltd. are each organized under the laws of the Cayman Islands. Plaintiff Prospect International High Income Portfolio, N.V., is a Netherlands Antilles corporation. A21-A22.

> A citizen's forum choice should not be given dispositive weight, however. . . . Citizens or residents deserve somewhat more deference than foreign plaintiffs, but dismissal should not be automatically barred when a plaintiff has filed suit in his home forum. *As always, if the balance of conveniences suggests that trial in the chosen forum would be unnecessarily burdensome for the defendant or the court, dismissal is proper.*

Piper, 454 U.S. at 255-56 n.23 (emphasis added).

Finally, petitioners contend that the decision below will "vitiate any deference to a United States plaintiff's choice of its own home forum." Pet. at 47. On the contrary, like most *forum non conveniens* dismissals, the Second Circuit's opinion is limited to its facts. In this very case, on the record presented to the District Court in support of the Banks' first motion to dismiss on the ground of *forum non conveniens*, the District Court applied the same standard, gave substantial deference to petitioners' choice of their home forum, and *denied* the Banks' motion.

On the Banks' second motion, the facts to which the District Court and the Second Circuit applied the *Gilbert* test reflected critical changes of circumstance,[7] which, coupled with the pre-existing factors, created an appropriate case *for* dismissal of petitioners' claims:

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7. Petitioners acknowledge that *Linter II* can only be reversed if the *Linter I* comity ruling is also reversed (*see* Pet. at 49) (arguing that the District Court's decision in *Linter II* "resulted from the Court's erroneous decision to dismiss *Linter I*"). Conversely, *Linter I* can be reversed without *Linter II* being reversed, because some of the "changed circumstances" that resulted in the dismissal of *Linter II* were unrelated to the comity dismissal of *Linter I*.

- Petitioners alleged a wholly foreign conspiracy among the issuer and unrelated third parties (the Banks) who did nothing in the United States to further the alleged conspiracy. A12.
- All of the Banks that were seeking a *forum non conveniens* dismissal are Australian or New Zealand entities. A3.
- All of the witnesses who allegedly participated in the conspiracy are in Australia. *Id.*
- All of the documents that might bear on the issues relating to that alleged conspiracy are located in Australia. A12.
- Federal courts had previously held that Australia is an adequate alternative forum. A55.
- Australian law provides causes of action under which relief may be sought.[8] *Id.*
- Petitioners had already proved that the Australian causes of action were available to them by filing suit seeking the same relief in Australia within the applicable statute of limitations. A4.
- Australia is over 10,000 miles away from the Southern District of New York.
- All of the alleged primary violators can be found in Australia, not in the United States. A12.
- All of the cross-claim defendants can be found in Australia, not in the United States. A13.

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8. Petitioners assume, without any support, that the Australian court will apply United States law. Pet. at 46.

- Compulsory process could not be obtained in the United States over important non-party witnesses. A12.
- Certain key witnesses would have been unavailable at a United States trial to provide live testimony. A12-13.
- The three related Australian proceedings in which petitioners were litigating had advanced to the stage that trial in Australia would not have been unfair to petitioners. A8.
- Petitioners are not individual bond purchasers with little or no financial resources;[9] rather, petitioners are a conglomerate of major institutions including Allstate Life Insurance Company, all of whom individually have the means to pursue their claims in Australia.

This Court should reject petitioners' request to impose a new, detailed standard that would eliminate a district court's discretion to dismiss a case on the ground of *forum non conveniens*.

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9. Many of the petitioners are speculators who purchased the already-risky junk bonds after the commencement of insolvency proceedings involving the Linter Defendants, and many bought even after this action was filed.

II

THERE IS NO CIRCUIT CONFLICT

The Second Circuit in the decision below correctly followed the *Gilbert* test. Every other circuit court that has analyzed the deference that should be given a United States plaintiff's choice of a United States forum has also considered the issue within the framework of the larger *Gilbert* analysis. *See, e.g., Mercier v. Sheraton Int'l, Inc.*, 981 F.2d 1345, 1354 (1st Cir. 1992) ("no absolute deference" is due an American plaintiff's selection of an available American forum; *forum non conveniens* is a flexible doctrine not subject to ritualistic application), *cert. denied*, 113 S. Ct. 2346 (1993); *Forsythe v. Saudi Arabian Airlines Corp.*, 885 F.2d 285, 290 (5th Cir. 1989) (American plaintiff's choice of forum receives deference only when evaluating private interests of litigants under *Gilbert*); *Macedo v. Boeing Co.*, 693 F.2d 683, 688 (7th Cir. 1982) (United States citizens deserve somewhat more deference than foreign plaintiffs, but if the balance of conveniences suggest that trial in chosen forum would be burdensome, dismissal is proper); *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339, 346 (8th Cir. 1983) (in denying *forum non conveniens* motion, court did not "place any talismanic significance" on the fact that plaintiff was a United States citizen), *cert. denied*, 464 U.S. 1042 (1984); *Cheng v. Boeing Co.*, 708 F.2d 1406, 1411 (9th Cir.) (dismissal affirmed when district court gave proper deference to plaintiff's United States citizenship under *Gilbert* analysis; fact that plaintiff was United States citizen was not a bar to dismissal), *cert. denied*, 464 U.S. 1017 (1983).

In an attempt to manufacture a conflict among the circuits, petitioners quote the Eighth Circuit's decision in *Reid-Walen v. Hansen*, 933 F.2d 1390 (8th Cir. 1991), and assert that the Eighth

Circuit's *forum non conveniens* analysis differs from that of the Second Circuit. Pet. at 34-37. In particular, petitioners argue that the Eighth Circuit dispensed with the balancing test because *Piper* and *Koster* allegedly require that substantial (if not absolute) deference be given to plaintiffs as a preliminary matter, that the burden then shifts to the defendants to overcome that deference, and that the balancing test only operates *after* that exercise. Petitioners then contend that the Eighth Circuit's analysis raises a substantial conflict with the decision below, in which the Second Circuit applied the balancing test, giving appropriate deference to plaintiffs' choice of forum *within* that test.[10] Pet. at 37.

While the Eighth Circuit reached a different result on the facts before it,[11] its analysis was identical to that of the Second Circuit. 933 F.2d at 1393 ("These [*Gilbert*] factors are applied in all *forum non conveniens* cases.") (citing *Mizokami Bros. of Arizona v.*

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10. Petitioners suggest (Pet. at 36) that the Second Circuit's recognition in *Linter II* that *Gilbert* set forth a "simple uniform standard" somehow "vitiated" that court's statement that there is a presumption in favor of a United States plaintiff's choice of forum. Application of the uniform *Gilbert* standard, however, is fully consistent with according a presumption in favor of a plaintiff's choice of forum, because the uniform standard *includes* the presumption as the Second Circuit correctly recognized.

11. The Eighth Circuit's opinion in *Reid-Walen* turned on its facts, which the Eighth Circuit measured against "the simple uniform standard of *Gilbert*." Most significant, in *Reid-Walen*, the defendants were United States citizens being sued by United States citizens in the defendants' home district in the United States. 933 F.2d at 1395-96. Here, by contrast, the Banks are Australian and New Zealand entities (*not* United States citizens) who were sued over 10,000 miles from their "home district" and equally far from the situs of all of the acts for which petitioners seek to hold them liable.

Mobay Chem. Corp., 660 F.2d 712, 717-18 (8th Cir. 1981)). Indeed, the Eighth Circuit's framework for analyzing the deference due American plaintiffs has always been the same as that of the Second Circuit. *See Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d at 346 (8th Cir. 1983). The Second Circuit, the Eighth Circuit, and every other circuit agree that a United States plaintiff's choice of forum should be given great deference, but not "talismanic" significance, and that the *Gilbert* test always applies. Petitioners' contention that there is conflict among the Circuit Courts of Appeal regarding *forum non conveniens* analysis is thus without merit.

CONCLUSION

For the foregoing reasons, the petition for writ of *certiorari* to the United States Court of Appeals for the Second Circuit should be denied.

Dated: September 29, 1993

Respectfully submitted,

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